

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

HAIQI CHEN,) Case No. 07-2462 SC
)
Plaintiff,)
)
v.) ORDER DENYING
) DEFENDANTS' MOTION TO
) DISMISS
)
United States Citizenship and)
Immigration Services ("USCIS");)
Department of Homeland Security)
("DHS"); Department of Justice)
("DOJ"); Federal Bureau of)
Investigation ("FBI"),)
)
Defendants.)
)
_____)

I. INTRODUCTION

Plaintiff Haiqi Chen ("Chen") filed a Petition for Writ of Mandamus ("Petition") on May 8, 2007. See Docket No. 1. In this Petition, Chen seeks to compel the adjudication of his application to adjust his immigration status ("Application"), which has been pending for more than four years. See Pet. ¶¶ 2, 4. Now before the Court is the Motion to Dismiss ("Motion") filed by the defendants United States Citizenship and Immigration Services ("USCIS"), Department of Homeland Security ("DHS"), Department of Justice ("DOJ"), and the Federal Bureau of Investigation ("FBI") (collectively "Defendants"). See Docket No. 15. Plaintiff filed an Opposition and Defendants submitted a Reply. See Docket Nos. 16, 17. For the following reasons, Defendants' Motion to Dismiss

1 is DENIED.

2
3 **II. BACKGROUND**

4 Chen is a national of China and a citizen of Canada. Pet. ¶
5 3. He earned his Bachelor of Science degree in Physics from the
6 University of Science and Technology in China and his Masters of
7 Science degree in astrophysics from the Beijing Astronomical
8 Observatory. Id. ¶ 16. He subsequently earned a Ph.D. in
9 astrophysics from the University of Western Ontario in Canada.
10 Id. Since January 2000, Chen has worked as a senior-level
11 technology project leader for @Road, Inc., in Fremont, California.
12 Id.

13 On July 3, 2003, Chen filed an employment-based Adjustment of
14 Status Application (I-485 form). Opp'n at 3. The Application was
15 based on a previously approved Immigration Petition for Alien
16 Worker (Form I-140), filed by @Road, classifying him as a member
17 of the professions with an advanced degree pursuant to 8 U.S.C. §
18 1153(b). Opp'n at 3; Pet. ¶ 10. Since July 2003, Chen has
19 complied with all security investigations, including submitting
20 fingerprints on three separate occasions; maintained legal non-
21 immigrant status; and made numerous attempts to determine why his
22 Application was not being processed. Pet. ¶ 2; Mot. at 4; Opp'n
23 at 3. The only action preventing adjudication of Chen's
24 Application is an FBI name check. Heinauer Decl. ¶ 4.¹ This name
25 check request was submitted to the FBI on July 11, 2003 and the
26

27 ¹ F. Gerard Heinauer is the Director of the Nebraska Service
28 Center in Lincoln, Nebraska, and is employed by DHS.

FBI acknowledged receipt of the name check on July 31, 2003. Id.
¶ 19.

III. DISCUSSION

Defendants seek dismissal of Chen's Petition pursuant to Federal Rules of Civil Procedure 12(b)(1), for lack of subject matter jurisdiction, and 12(b)(6), for failure to state a claim. In the alternative, Defendants have moved to dismiss the FBI as a party to the case.

The Court hereby adopts the reasoning of the Order issued in Soneji v. DHS, No. CV 07-2290, 2007 WL 3101660, at *1 (N.D. Cal. Oct. 22, 2007). Defendants' Motion to Dismiss for lack of subject matter jurisdiction and for failure to state a claim is therefore DENIED.²

Defendants also move, in the alternative, to dismiss the FBI as a defendant in the present case. As the Court has jurisdiction over Chen's Petition and because Chen has stated a valid claim for relief, the Court need not reach, at this stage, the issue of whether the FBI is a proper defendant. See Toor v. Still, No. C 07-0645, 2007 WL 20028407, at *3 n. 14 (N.D. Cal. Jul. 10, 2007) (holding that whether the FBI is a proper defendant need not be reached on the defendants' Motion to Dismiss because "the Court has jurisdiction over plaintiff's claims at least as to some of

² Defendants, in their Reply, concede that this Court's Order in Soneji, issued after Defendants filed their Motion in the present case, squarely addressed, and rejected, Defendants' arguments in support of dismissing the present case. See Reply at 1.

the defendants").

IV. CONCLUSION

For the foregoing reasons, Defendants' Motion to Dismiss is
DENIED.

IT IS SO ORDERED.

Dated: December 18, 2007



UNITED STATES DISTRICT JUDGE